BEFORE THE APPEALS BOARD FOR THE KANSAS DIVISION OF WORKERS COMPENSATION

GEORGE L. BROWN)
Claimant)
VS.)
) Docket No. 253,707
FABPRO ORIENTED POLYMERS, INC.)
Respondent)
AND)
)
PHOENIX INSURANCE COMPANY)
Insurance Carrier)

ORDER

Respondent and its insurance carrier appealed the September 28, 2000 Order entered by Administrative Law Judge John D. Clark.

ISSUES

Claimant alleges that he injured his neck and left shoulder on March 1, 2000, while working for respondent. This appeal arises from a second preliminary hearing in which respondent and its insurance carrier presented additional evidence refuting timely notice. In the September 28, 2000 Order, the Judge ruled that he had previously decided the notice issue in the first preliminary hearing and that the earlier preliminary hearing order, which granted claimant benefits, remained in full force and effect.

Respondent and its insurance carrier contend Judge Clark erred. They contend that claimant failed to provide timely notice of the accidental injury and, therefore, claimant's request for benefits should be denied. They argue that they did not receive notice of the alleged accident or injury until claimant sought medical treatment on March 17, 2000.

Conversely, claimant contends the September 28, 2000 Order should be affirmed. Claimant argues that he gave notice to respondent on both March 1, 2000, and on March 9 and/or March 10, 2000.

The only issue before the Board on this appeal is whether claimant provided respondent with timely notice of the alleged accident or injury.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record compiled to date, the Board finds:

The September 28, 2000 Order should be affirmed. This case hinges upon the credibility of claimant and his wife. Claimant testified that within 10 days of the alleged March 1, 2000 accident he had notified several of his supervisors that he had been injured on the job. Claimant's wife testified that within 10 days of the alleged accident she also told one of claimant's supervisors that claimant had neck and arm pain due to his work. But those same supervisors denied receiving timely notice.

The Judge has now observed both claimant and his wife testify on two occasions. Based upon that personal observation, the Judge has found their testimonies credible and persuasive. In this instance, the Board defers to the Judge's determination of claimant's credibility and affirms the finding that claimant provided respondent with timely notice¹ of the accidental injury.

WHEREFORE, the Board affirms the September 28, 2000 Order.
IT IS SO ORDERED.
Dated this day of January 2001.
BOARD MEMBER

c: Charles W. Hess, Wichita, KS William L. Townsley, Wichita, KS John D. Clark, Administrative Law Judge Philip S. Harness, Director

¹ See K.S.A. 44-520.